

Alternate Report Coalition – Children’s Rights South Africa (ARC-CRSA)¹

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF SOUTH AFRICA ON THE RIGHTS OF CHILDREN IN SOUTH AFRICA

This submission is based on Alternate Reports and civil society responses to government’s responses to Lists of Issues prepared for the African Committee on the Rights and Welfare of the Child (2014) and the UN Committee on the Rights of the Child (2015 and 2016). It reflects the agreed positions of over 40 civil society organisations.

This Universal Periodic Review submission was prepared by the following:

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¹ The Alternate Report Coalition-Children's Rights South Africa (ARC-CRSA), is an alliance driven by 11 organisations and two independent experts invested in realising children’s rights in the country. It came into existence to hold government accountable against provisions on treaties relevant to children’s rights by preparing the relevant alternate reports. The 11 lead organisations are: Centre for Child Law, University of Pretoria; Children’s Institute, University of Cape Town; Childline South Africa; Community Paediatrics, University of the Witwatersrand; Dullah Omar Institute, University of the Western Cape; Equal Education Law Centre; Lawyers for Human Rights; Legal Resources Centre; Resources Aimed at the Prevention of Child Abuse and Neglect; Save the Children South Africa; and Sonke Gender Justice. The two independent experts are: Carol Bower and Joan van Niekerk.

MONITORING AND OVERSIGHT MECHANISMS ON CHILDREN'S RIGHTS

- ❖ *Provide the Ministry and Department of Women, Children and People with Disabilities with the necessary powers to continue promoting the participation and contribution of these vulnerable groups to the development of the country (Chile, Cycle 2, Recommendation no: 124.26)*
- ❖ *That the newly established Department of Women, Children and People with Disabilities be empowered to coordinate actions amongst various Government agencies to address the issue of gender-based violence (Timor-Leste, Cycle 2, Recommendation no: 124.27)*

1. The Ministry and DWCPD, mandated to improve monitoring and coordination of children's rights (and the rights of women and persons with disabilities), was established in 2009 and disbanded in 2014. Its functions relating to children moved to the Department of Social Development (DSD). Civil society organisations (CSOs) were critical of the performance of the DWCPD, on the basis of its limited capacity; it was not an implementing department and had little authority over implementing departments (Basic Education, Health, Justice, Police and DSD). These problems have not been adequately addressed by moving the mandate to DSD, particularly regarding DSD's relatively weak political authority over the range of implementing departments.
2. Overall, political leadership for realising children's rights is extremely poor, and the policy for interdepartmental cooperation is poorly implemented. CSOs are excluded from many of these forums, and where invited, they are expected to fund their own travel, thus excluding the participation of the majority of organisations. The protection of children's rights has been strengthened by decisions of the courts, driven by civil society action. These cases are discussed throughout this Alternate Report. They include cases dealing with the best interest of the child principle; adolescent sexual autonomy rights; the rights of asylum seekers to access education; systemic failures that resulted in Foster Care Grants not being paid; the rights of child offenders; and automatic review, within 24 hours, of decisions to separate a child from his/her parents or caregivers amongst many others.
3. In line with the UN CROC General Comment 2, issued in 2002, and the 2014 Concluding Recommendations from the ACERWC to the GOSA, CSOs agree that South Africa requires an independent child's rights monitoring body. The ideal form that this should take is not yet clear, some favour the creation of a Children's Ombud, while others argue the appointment of a dedicated Children's Rights Commissioner to the Human Rights Commission (HRC), with greater resources. This must be resolved through a consultative process with civil society. There is strong consensus that such a body must be properly capacitated and have the necessary authority.

Recommendations of the Coalition

- ✚ Stronger political leadership, monitoring and coordination to realise children's rights preferably, a ministry established within the Presidency; and establishing an independent child's rights monitoring body with the necessary resources, capacity and authority.

- ✚ Civil society engagement, consultation and participation in governance, implementation and monitoring processes must be routine and funded.

CHILDREN LIVING IN POVERTY

- ✚ **Maintain and intensify the efforts towards the elimination of poverty and social inequality (Lesotho, Cycle 2, Recommendation no: 124.114)**
 - ✚ **Take effective measures to combat poverty (Iraq, Cycle 2, Recommendation no: 124.113)**
4. Nearly 56% of children in South Africa live in poverty, and 32% of all children live in households where there is no employed adult;² 43% of female-headed households do not include a single employed person.³ The decrease in the proportion of children living in poverty over the past decade is attributed primarily to the availability of social grants, and not declining unemployment rates, which remain unacceptably high. South Africa is a deeply unequal society; despite a decrease in absolute income poverty, income inequality has increased.⁴ Although South Africa is a middle-income country, resources are unevenly distributed and while some children thrive, the majority face serious challenges. The country has one of the highest global Gini coefficients, at 0.68, and progress in addressing inequality has been weak.⁵ Inequality and inadequate income compromise children's health, quality education, and access to services, and frequently leaves them in situations where their physical safety is threatened.⁶ In the context of our middle-income status, the high rates of malnutrition, children affected by HIV, child mortality and persistently weak performance in education are a national disgrace.⁷

BIRTH REGISTRATION

- ✚ **Ensure that all children are issued with a birth certificate in order to access various social services, with particular focus on children of migrants (Slovakia, Cycle 2, Recommendation no: 124.151)**

² Hall, K, and Sambu W. 2014. Income Poverty, Unemployment and Social Grants in Mathews S, Jamieson L, Lake L & Smith C (eds). 2014. *South African Child Gauge 2014*. Cape Town: Children's Institute, University of Cape Town.

³ Statistics South Africa. 2010. *Social profile of South Africa, 2002–2009*. Pretoria: Statistics South Africa. Available from www.statssa.gov.za/publications/Report-03-19-00/Report-03-19-002009.pdf (accessed 6 March 2013).

⁴ Sudhanshu S. 2012. Rising inequality in South Africa: Drivers, trends and policy responses. *Consultancy Africa*.

www.consultancyafrica.com/index.php?option=com_content&view=article&id=1142:rising-inequality-in-southafrica-drivers-trends-and-policy (accessed 6 March 2013).

⁵ Finn A & M Leibbrandt. 2013. *Mobility and Inequality in the First Three Waves of NIDS*. SALDRU Working Paper

Number 120/ NIDS Discussion Paper 2013/2. Cape Town: SALDRU, University of Cape Town

⁶ Hall et al. 2012. *Op cit*.

⁷ Shisana O, D Labadarios, T Rehle, L Simbayi, K Zuma, a Dhansay, P Reddy, W.M Parker, T Maleeka. S Ram Iagan, N Bungu, MG Evans, L Jacobs, M Faber and SANHANES-1 Team. 2013. *South African National Health and Nutrition Examination Survey (SANHANES-1)*. Cape Town: HSRC Press.

5. South Africa has made progress in improving children's access to birth certificates and their parents' access to identity documents, mainly in ensuring increasingly good rates of birth registration within 1 year of the child's birth. However 50% of children are only registered after the prescribed period of 30 days—with the percentage being higher in the more rural provinces. For example, in Mpumalanga, only 37% of registrations occurred within 30 days.⁸ Despite this, in March 2014, South Africa put into effect an Amendment to the Births and Deaths Registration Act (No. 18 of 2010) that makes birth registrations after 30 days more difficult to access by imposing additional requirements (in the form of an affidavit) and the payment of a prescribed fee.⁹ Children who experience higher levels of social exclusion will be further disadvantaged by these stricter requirements, particularly children in rural areas, and orphaned and abandoned children.
6. Foreign migrant children are at risk due to lack of access to birth registration and identification documentation. Refugees and asylum seekers who are registered with the DHA are entitled to register the birth of a child, and, despite some barriers, are generally able to do so and obtain birth certificates.
7. However children born to undocumented migrant women are at serious risk of becoming stateless. In addition, when unaccompanied foreign children (without asylum claims and who cannot be reunited with family or returned to their country of origin) who lack identification documents, reach the age of majority and must exit the South African child protection system, they risk remaining undocumented. Without the ability to prove or access a nationality, they will be unable to access basic rights such as education, health care, employment, equality, liberty and security of the person.
8. The 2014 Births and Deaths Registration Amendment Act and its regulations introduce a new requirement that a foreign parent wishing to obtain a birth certificate for their child must provide proof of legal residence in South Africa and a copy of their passport. There are many migrants in South Africa without proof of legal residence. There are also many refugees without passports who will be unable to obtain them from their country of origin. The result of the imposition of this requirement will be that many children born in South Africa to migrant parents will be unregistered and are likely to grow up stateless, be denied access to a range of socio-economic services and denied their internationally and constitutionally protected rights.

Recommendations of the Coalition

- ✚ The state must not implement the stricter requirements of proof and fees for birth registration from 30 days to 1 year.
- ✚ The cost of obtaining birth certificates and copies for purposes of Children's Court inquiries (child protection cases) should be waived by the DHA.
- ✚ All applications for birth certificates and copies required for Children's Court processes should be processed within a period of 30 days by DHA.

⁸ 46 Department of Home Affairs data as set out on Pg 74 and 136 of the South African Country Report

⁴⁷ Proudock P and Martin P. 2014. Children's rights to birth registration: A review of South Africa's law.

⁹ In Proudlock P (ed) 2014. South Africa's Progress in Realising Children's Rights: A Law Review. Cape Town: Children's Institute, University of Cape Town & Save the Children South Africa. Pg 30

- ✚ The new requirement in law that foreigners can only get a birth certificate for their child born in South Africa if they have a passport and proof of legal residence, should be repealed. Birth registration should not be conflated with enforcing immigration laws.
- ✚ Government should reconsider its position and sign the Statelessness Convention as it has previously pledged in order to develop a legal framework and mechanisms to assess, prevent and reduce statelessness.

CHILDREN'S ACCESS TO SOCIO ECONOMIC RIGHTS

- ❖ ***Ratify ICESCR (Brazil (Recommendation no: 124.4), France (Recommendation no: 124.9), in Cycle 1 and, Chad (Recommendation no: 124.5), Palestine (Recommendation no: 124.6), Slovenia (Recommendation no: 124.7), Portugal (Recommendation no: 124.8 in Cycle 2)***
- ❖ ***Continue its favourable policies aiming at the full enjoyment of the cultural, economic and social rights, especially for vulnerable groups, including women, children, the elderly, the minorities and persons with difficulties (Vietnam, Cycle 2, Recommendation no: 124.24)***

9. South Africa finally ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), but has a reservation relating to the immediate realisation of access to education. This reservation supports the progressive realisation of the right to basic education which is in conflict with the Constitution. The unqualified nature of this right has been endorsed by the Constitutional Court in the case of *Juma Masjid*.

Right to health

- ❖ ***To fight against child mortality, and thus implement Millennium Development Goal number four, in particular by improving children's living conditions and their access to adequate food (Germany, Cycle 2, Recommendation no: 124.126)***
10. The right to life, survival and development for children in South Africa is entrenched in some good legislation, but is constantly undermined by many challenges. Estimates of child mortality varied widely over the reporting period, growing consensus is that under-five mortality rose from the early 1990s to an estimated peak of 70 — 80 deaths per 1,000 births in 2003 — 2005, driven primarily by the HIV pandemic.¹⁰ Remarkable gains followed between 2006 and 2011, but mortality rates stagnated in 2012-13. The decrease is likely attributable to the reduction in new HIV infections through improved prevention of mother-to-child transmission (PMTCT), increased antiretroviral therapy (ART) access, the introduction of pneumococcal and rotavirus vaccines (reducing pneumonia and diarrhoeal deaths respectively) and improved access to water and

¹⁰ Nannan N, RE Dorrington, R Laubscher, N Zinyakati r, M Prinsloo, TB Darikwa, R Matzopoulos and D Bradshaw. 2012. *Under-5 mortality statistics in South Africa: Shedding some light on recent trends and causes 1997–2007*. Cape Town: Medical Research Council.

sanitation. The reduction in HIV-related and diarrhoeal deaths appears to be key.¹¹ There is less evidence of reduction in pneumonia deaths.¹² Despite these gains South Africa failed to reach the MDG4 target and the latest (2013) under-five, infant and neonatal mortality rates are 41, 29 and 11 deaths per 1000 livebirths respectively.¹³

11. Despite modest decreases in diarrhoea and pneumonia case fatality, and reduction in severe acute malnutrition fatality, in-hospital case fatality rates for children under 5 in public hospitals between 2011 and 2014 have not decreased.¹⁴ Infant case fatality is particularly problematic. This situation reflects failure to improve quality of care overall, and probably reflects significant numbers of HIV-infected children who are not on ART and arrive seriously ill at hospital.

Recommendations of the Coalition

- ✚ We note the failure of the DH to adequately respond to the recommendations made by the ministerial committees on child, neonatal and maternal morbidity and mortality, and call on government to take action and implement these.
- ✚ An essential package of care for children needs to be defined and adopted by government. The package should function within a defined set of norms and standards across the continuum of care - from neonatal care to adolescent and youth friendly services. These demand that adequate human and financial resources are allocated to child health services, should drive quality improvement and address accountability.
- ✚ The lack of caring attitudes amongst health care providers must be explicitly addressed and integrated into performance appraisal systems to improve quality.
- ✚ Child health continues to be compromised by poverty, food insecurity, inadequate housing, water and sanitation. A clear multi-sectoral implementation plan with interim targets and a monitoring and reporting system is required.
- ✚ Power is overly centralised at provincial level, districts' power to manage services and budgets is marginalised. Strong leadership is required at district level to drive intersectoral collaboration and address local determinants of child health.
- ✚ Community health workers: While the re-engineering of PHC envisages an expanded role for CHWs, greater efforts are needed to develop and support the functioning of a cohort of community level maternal and child health

¹¹ Pillay, Y., & Barron, P. (2014). Progress towards the millennium development goals in SA. *S Afr Med J*, 104 (3 Suppl 1), 223; Sherman, G. G., Lilian, R. R., Bhardwaj, S., Candy, S., & Barron, P. (2014). Laboratory Information System data demonstrate successful implementation of the Prevention of Mother-to-Child transmission Programme in South Africa. *South African Medical Journal*, 104(3 Suppl 1), 235-238.

¹² Cohen, C., von Mollendorf, C., de Gouveia, L., Naidoo, N., Meiring, S., Quan, V. von Gottberg, A. (2014). Effectiveness of Seven-valent Pneumococcal Conjugate Vaccine (PCV-7) against Invasive Pneumococcal Disease in HIV-infected and -uninfected children in South Africa: A Matched Case-Control Study. *Clin Infect Dis*. doi: 10.1093/cid/ciu431

¹³ Dorrington RE, Bradshaw D, Laubscher R & Nannan N (2014) *Rapid Mortality Surveillance Report 2013*. Cape Town: Medical Research Council.

¹⁴ District Health Information System data

workers. Including improvements to their curriculum and conditions of service, expanding their scope of practice and their integration into the health care system, mentoring and support.

- ✚ Policy, programmes and other initiatives to address the right to health of children with disabilities must be integrated into a holistic government programme for realising the rights of children with disabilities, including promoting optimal development, preventing developmental delay, and providing services for children with disabilities that optimise their health, development and participation, across the life course.
- ✚ Adolescents require discreet and easy access to a range of SRH services including condoms, emergency contraception, post-exposure prophylaxis (PEP), medical circumcision, HIV tests, ARVs and treatment for STIs. SRH education must address questions of gender and sexual identity, enable young people to manage relationships, negotiate safe sex and challenge the norms that legitimate gender-based violence. It is important to engage with health workers, teachers and parents to address paternalistic and judgemental attitudes to teenage sex that prevent the information, support and services needed.
- ✚ The Road to Health booklet is intended as an entry point to a package of services that extend beyond growth monitoring and immunisation to include development– and should serve as an effective patient-held record of treatment. It is therefore recommended that both health workers and mothers are empowered to use the booklet effectively.
- ✚ Data collection and evaluation systems need to be strengthened. In particular, Child PIP and PPIP must be mandatory and extended to all facilities to identify and address avoidable causes of child and neonatal deaths in the health care system. This should be complemented by the introduction of child death reviews.

Right to education

- ❖ ***Strengthen its educational strategies to ensure that all children enrol in school and receive basic education (Iran, Cycle 2, Recommendation no: 124.142)***
- ❖ ***Maintain its commitment to improve the quality of education to ensure the full enjoyment of the right to education (Timor-Leste, Recommendation no: 124.145.)***

12. Effective expenditure would necessitate equitable and pro-poor expenditure. Whilst pro-poor funding policies linked to 'schools in the poorest income quintiles' are referenced in the CPR as a measure designed to aid marginalised learners, their impact is curtailed by the limited focus on non-personnel expenditure which constitutes less than 10% of education spending. An education economist concluded that: "every South African datasheet of educational achievement shows that there are in effect two different public education systems in South Africa. The smaller, better performing system

accommodates the wealthiest 20-25 percent of pupils who achieve much higher scores than the larger system which caters to the poorest 75-80% of learners.”¹⁵

13. The unequal distribution of teachers has not been addressed on a pro-poor basis. Measures, financial incentives and funding to provide more equitable provision of more highly qualified teachers to schools catering for poor learners remains absent. The allocation of teachers to schools in provinces takes place in accordance with a post provisioning model. Although the current model states that the “head of a provincial department must set aside a certain percentage of its available posts for poverty redress based on the department’s relative level of internal inequality”¹⁶ this is subject to the Minister of BE exercising statutorily conferred discretionary power to “set the maximum percentage that provincial departments may use for this purpose”. The Minister has set this maximum limit at a meagre 5%.
14. The current teacher post provisioning model fails to account for the number of additional teachers that privileged fee-charging schools can hire, or for the fact that most of the better suburban schools attract better qualified teachers who receive higher salaries from government. The resultant effect is that government spends more per learner in these better suburban schools than it does on learners in township and rural schools.
15. Despite the improvement in retention rates, learner drop-out rates are concerning. A 2013 DBE report recognises the “high levels of drop-outs [which] begin after the age of 16. Attainment of matric is still unequal across race groups, with white and Indian youths more likely to attain matric than black and coloured youths.”¹⁷ While there has been a moderate increase in the number of learners who attain matric, a study of learners born between 1985—1987, found that 17.5% of learners who achieve grade 10, and a further 28.3% of learners who achieve grade 11, received no further education. Drop-out rates are closely related to high repetition rates in grades 10—12.
16. Analysis of Community Survey data found children with disabilities to be disproportionately represented among school drop-outs. The data indicate that children with disabilities have a lower school attendance rate than other children, as 22.5% (38,000) were out of school.¹⁸

Recommendations of the Coalition

- ✚ Continued increase of allocation to BE budget, based on pro-poor budgeting and expenditure priorities.
- ✚ President to sign a proclamation in terms of Act 74 of 1996 conferring authority on the Special Investigation Unit to investigate both nationally and provincially (a) maladministration (b) unlawful appropriation or expenditure of public funds (c) intentional or negligent loss of public money (d) the need for criminal or civil proceedings (e) the need for institution of disciplinary proceedings against employees.

¹⁵ South Africa’s Education Crisis: The quality of education in South Africa 1994 – 2011; Nicholas Spaul, October 2013, *Report Commissioned by Centre for Development and Enterprise*.

¹⁶ Regulations for the Creation of Educator Posts in a Provincial Department of Education and the Distribution of Such Posts to the Educational Institutions of Such a Department, Annexure 1: “Weighting norms” at section 5(a)

¹⁷ *The internal efficiency of the school system*, Department of Basic Education, 2013, pg 4. See: <http://www.education.gov.za/LinkClick.aspx?fileticket=Jaaol0vqeR4%3D&tabid=3623> February 2014.

¹⁸ 204 Human Rights Watch Report “*Complicit in Exclusion*” – *South Africa’s failure to guarantee an inclusive education for children with disabilities*, released on 18 August 2015; Fleish B, J Shindler and H Perry. 2009. *Children out of school: evidence from the Community Survey*. in Pendlebury S, L Lake L and C Smith (eds) *South African Child Gauge 2008/2009* Cape Town: Children’s Institute, University of Cape Town

- ✚ Introduce legal reform to replace the existing teacher provisioning model with a pro poor model that addresses the disparities within the public education system.
- ✚ Strengthen the legal framework around privatization and create strict monitoring reporting obligations, particularly regarding reporting on their financial affairs.

VIOLENCE AGAINST CHILDREN INCLUDING PROHIBITING CORPORAL PUNISHMENT

- ❖ ***Adopt all necessary measures to prevent, fight and punish any violence against women and children (Switzerland, Cycle 2, Recommendation no: 124.61)***
- ❖ ***Rigorously apply the legislation against gender violence and sexual violence, especially against girls and boys (Spain, Cycle 2, Recommendation no: 124.74)***

17. South Africa's high levels of interpersonal, community and sexual violence support ARC-CRSA's belief that violence against children (VAC) has become 'normalised'. This is a matter of extreme concern. Marginalised children (e.g. children with disabilities, migrant children and children in rural areas) are most vulnerable to violence.¹⁹ The relatively solid legal frameworks to address child protection have not contributed to prevention or increased protections to children, and require urgent budget and programmatic interventions.
18. Despite a strong legal framework, VAC of all forms continues to be widespread. South Africa has one of the highest reported rates of sexual violence, with approximately 60 cases of child sexual assault reported to the police daily.²⁰ Further, one third of South Africa's children report physical violence.²¹ Violence also kills. Just over a 1,000 children are murdered annually, of which nearly half are the result of fatal child abuse.²²
19. The 2015 Optimus national prevalence study established that 20% of children report an experience of sexual abuse before the age of 18.²³ A national study on child homicide shows conclusively that children under-5 are at increased risk of being killed in the home due to fatal child abuse.²⁴ A child death review pilot highlighted the need to strengthen the policy framework for child protection as children are dying due to an overburdened system; however, the challenges to appropriate implementation of law and policy remain obdurate and serious.

¹⁹ Hesselink-Louw A, K Booyens and A Neethling. 2003 Disabled children as invisible and forgotten victims of crime. *Acta Criminologica* 16(2) p.165-180.

²⁰ Wilkinson K. 2014. *Is a Child Raped every three Minutes in South Africa?* Accessed at <https://africacheck.org/reports/is-a-child-raped-every-three-minutes-in-south-africa-the-statistic-is-flawed/>

²¹ DSD, DWCPD and UNICEF. 2012. *Violence Against Children in South Africa*. Pretoria: Department of Social Development/Department of Women, Children and People with Disabilities/UNICEF.

²² Mathews S and Benvenuti P. 2014. Violence against children in South Africa: Developing a prevention agenda. In Mathews S, Jamieson L, Lake L and Smith C (eds). *South African Child Gauge 2014*. Cape Town: The Children's Institute.

²³ Burton P, Ward C, Artz L & Leoschut L. 2015. *The Optimus Study on Child Abuse, Violence and Neglect in South Africa*. Centre for Justice and Crime Prevention. Cape Town.

²⁴ Mathews and Benvenuti. 2014. *Op cit*.

Corporal Punishment

- ❖ ***Prohibit and punish corporal punishment both in the home, as well as in public institutions such as schools and prisons (Mexico, Cycle 2, Recommendation no: 124.88)***

20. Given such high levels of VAC, the failures of the child protection system response and the established link between physical punishment and child abuse, it is of grave concern to ARC-CRSA that South Africa has yet to prohibit corporal punishment in the home.
21. While South Africa has prohibited corporal and humiliating punishment in public spheres, it is still largely socially accepted and legally permitted in the home, despite government's protestations to the contrary. Evidence indicates that physical punishment in the home is widespread; in addition, poor implementation of the prohibition in schools has left millions of children vulnerable within the education sector.²⁵
22. South Africa is currently amending several sections of its Children's Act (No. 38 of 2005 as Amended). The lead Department of Social Development (DSD) has committed publicly to include prohibition in the home among these; text for this has been developed. Civil society is not reassured by this, however, as DSD has previously supported amendments to the law to prohibit corporal punishment in the home, only to withdraw these in the face of political resistance at the eleventh hour.
23. Recommendations from a range of treaty bodies at UN and AU level, which South Africa has accepted, have included the prohibition of corporal punishment in the home.
 - The concluding observations of the UN Committee on the Rights of the Child (UNCROC), issued in February 2000, recommend that South Africa 'prohibit by law the use of corporal punishment in the family'.
 - Most recently prohibition of corporal punishment in the home has been recommended by:
 - The UN Human Rights Committee in April 2016;²⁶
 - The South African Human Rights Commission (SAHRC) in January 2016;²⁷
 - The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in 2015;²⁸
 - The Universal Periodic Review (UPR) examination of South Africa in 2012.²⁹

²⁵ Burton P and Leoschut L. 2012. *School Violence in South Africa*. Cape Town: CJCP

²⁶ April 2016, CCPR/C/ZAF/CO/1 Advance Unedited Version, *Concluding observations on initial report*, paras. 24 and 25). Accessed at

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/CCPR_C_ZAF_CO_1_23451_E.doc on 2016/05/13

²⁷ SAHRC. 2016. Investigative Report: Joshua Generation Church, 10.4, p56. Accessed at <http://www.genderjustice.org.za/publication/human-rights-commission-report-on-corporal-punishment-and-joshua-generation-church/> on 2016/05/13

²⁸ November 2015. Concluding recommendations by the ACERWC on the South Africa's Initial Report on the African Charter on the Rights and Welfare of the child, III(B)[35,36]. Accessed at <http://dullahomarinate.org.za/women-and-democracy/reporting-on-childrens-rights/acerwc-concluding-recommendations-to-sa-govt.pdf> on 2016/05/13

²⁹ July 2012, A/HRC/21/16, *Report of the working group*, para. 124(88)

- UN Committee Against Torture,³⁰ specifically with regard to implementing the prohibition in schools.

Recommendations of the Coalition

ARC-CRSA urges the South Africa (GOSA) to:

- ✚ Ensure that a coordinated response to prevention of violence against children is prioritised and resourced. An evidence-based national action plan is needed, which fosters inter-sectoral collaboration to mitigate the long-term impact of violence.
- ✚ Prioritise the prohibition of corporal punishment in the home by extracting the relevant clause from the proposed amendments and fast-tracking its passage through the promulgation process. GOSA should be urged by the committee to commit to legal prohibition within the next year.
- ✚ Implement large-scale evidence-based programmes to support non-violent parenting and shift social norms that support violent discipline, in line with provisions currently in the Children's Act.

Harmful customary and social practices

- ❖ *Pay special attention in the adoption of laws and their implementation to change of negative social practices particularly with respect to, torture and ill treatment in detention, sexual violence and discrimination against women and the protection of children (Cape Verde, Cycle 2, Recommendation no: 124.20)*

24. Deaths and mutilations due to **botched circumcisions** devastate the lives of boys and their families. Despite the Application of Health Standards in Traditional Circumcision Act of 2001, from June 2001 to December 2006, one provincial Health Department recorded 208 deaths and 115 mutilations out of 2,262 hospital admissions due to initiation practices.³¹ A 2014 report revealed that despite the high number of deaths and injuries, only 11 people had been convicted.³² The SAPS indicate that they do not keep case-specific crime conviction data so they are not able to confirm this number of people convicted.³³

25. **Virginity testing** is mainly supported in Eastern Cape and KwaZulu-Natal Provinces. Children identified as non-virgins are exposed to physical and emotional danger. Anecdotal evidence suggests that girls under the age of 16 are subjected to virginity testing in contravention of the Children's Act. Additionally, children who have been sexually abused and identified as non-virgins face increased risks. Some traditional leaders have openly stated their opposition to the provisions on virginity testing.³⁴

³⁰ December 2006, CAT/C/ZAF/CO/1, *Concluding observations on initial report*, para. 25

³¹ Eastern Cape Department of Health. Undated. *Health Statistics: Circumcision Statistics Since June 2001*. Retrieved from www.ecdoh.gov.za/uploads/files/120707095947.pdf.

³² See www.da.org.za/2014/08/119-initiation-deaths-11-presons-convicted/

³³ See www.iol.co.za/news/crime-courts/initiation-deaths-go-unpunished.1.1880486.

³⁴ www.iol.co.za/news/politics/virginity-testing-exposes-rape-says-king-1.1374488#.Uu9VHz2Sw4c

Recently a man who owns an initiation school for girls was convicted of rape and assault and sentenced to 17 life imprisonments.³⁵ Although these cases are rare, the sentence should serve as a deterrent to those who conduct violent acts against girls under the guise of cultural practices.

26. **Ukuthwala** (forced marriage) is predominantly reported in the Eastern Cape, Mpumalanga and KwaZulu-Natal. The exact numbers of girls affected is unknown. The practice compels girls and young women into marriage against their will, with anecdotal reports of sexual assault perpetrated as part of the kidnapping. In *S v Jezile* the Western Cape High Court dismissed the accused's defence of ukuthwala as a customary practice against charges of rape, abduction and assault where the victim was a 14 year old girl.³⁶ The South African Law Reform Commission has produced a Discussion Paper with recommendations on addressing ukuthwala.³⁷

Recommendations of the Coalition

- ✚ The GOSA must take steps to ensure that initiation schools comply with the Children's Act. Furthermore, health and safety initiatives to eradicate incidences of deaths and injuries are a priority.
- ✚ Prosecution of those who are responsible for deaths and injuries of initiates must be prioritised and statistics in relation to these prosecutions must be disaggregated.
- ✚ The State Party must ensure that virginity testing is practiced in accordance with the Children's Act age of consent at 16 years and does not allow for marking girls as virgins.
- ✚ The GOSA must implement the South African Law Reform Commission recommendations: define "forced marriage", "child marriage", and "ukuthwala", criminalise all persons involved in forcing a person into marriage; include an aggravated offence in relation to a person under the age of 18 years and undertake education, and awareness-raising among professionals, urban and rural communities and with traditional leaders to address the root causes and consequences of ukuthwala.

Children with disabilities

- ❖ *Strengthen its development policies in rural areas, with special emphasis on the access of children and persons with disabilities to services (Chile, Cycle 2, Recommendation no: 124.111)*

27. There is no single piece of legislation governing disability. Provisions for children with disabilities are scattered across a range of policies. The Integrated National Disability Strategy is intended to guide all sector-specific legislation (we note that a new policy on disability rights is currently being drafted to replace this); and the significant provisions

³⁵ See www.iol.co.za/news/crime-courts/harsh-sentence-for-initiation-school-owner-1.1924584

³⁶ (A127/2014) [2015] ZAWCHC 31 available at www.saflii.org/za/cases/ZAWCHC/2015/31.html.

³⁷ Discussion Paper 132 of Project 138 available at www.justice.gov.za/salrc/dpapers/dp132-Ukuthwala.pdf.

for children with disabilities in the Children's Act are welcomed.³⁸ The Act states that in any matter concerning a child with a disability, consideration must be given to enabling his or her participation and providing conditions which ensure dignity, self-reliance and community involvement.³⁹ The 2009 DSD draft Strategy for the Integration of Services to Children with Disabilities, is intended to guide the development and implementation of all government frameworks on children with disabilities, align budgets, remove barriers of access to and improve the quality of services. However, the Strategy lacks coherence and is ineffective in guiding the development of co-ordinated and comprehensive services for children with disabilities.

28. The Disabled Children's Action Group, a national membership organisation of parents of children with disabilities, argues that in spite of this framework, access to the full range of services for the majority of children with disabilities is compromised. They note that inter-departmental collaboration and integration of services is seldom evident and that it is essential that GOSA prioritise this. They emphasise the serious lack of services and support for children with disabilities in rural areas; they add that policies do not take a family-centred approach and thus fail to provide effective support to parents to the ultimate benefit of the child.
29. The absence of information disaggregated for children with disabilities renders them invisible and masks the disproportionate extent to which they are excluded from services. This woeful lack of data on the prevalence of disabilities in South African children and of the numbers of children accessing services from various government agencies severely impedes effective planning and budgeting to enable the full inclusion of children with disabilities in South African society.
30. The lack of access to health, ECD, education and social security rights for children with disabilities as well as the levels of violence committed against them is a serious concern.⁴⁰

Recommendations of the Coalition

- ✚ Greater political leadership and commitment to realise the rights of children with disabilities is essential. These children have diverse needs that require an integrated approach and collaboration between the departments of health, social development, transport, police, justice and basic education.
- ✚ GOSA should develop a single piece of legislation to specify, coordinate and govern services for children with disabilities and developmental delays.
- ✚ The extreme marginalisation and discrimination against children with disabilities means that services to these children must be prioritised by government departments who must provide dedicated reporting on these services.
- ✚ Increased focus on prevention and early intervention programmes in both the health and social development sectors is critical, as is a family oriented approach to services for children with disabilities.

³⁸ Jamieson L & P Proudlock. 2009. From sidelines to centre stage: the inclusion of children with disabilities in the Children's Act. Children's Institute Case Study number 4. Cape Town: University of Cape Town.

³⁹ Children's Act 38 of 2005 s11

⁴⁰ The concerns about this draft strategy are contained in a submission to DSD Development made by the ECD sub-group on the right to Education for Children with Disabilities, October 2013.

